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Limited d/b/a Convention Technical Services*

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
357, AFL-CIO,

Respondent,

and

DESERT SUN ENTERPRISES LIMITED d/b/a
CONVENTION TECHNICAL SERVICES

Charging Party.

Case No.: 28-CC-115255

**DESERT SUN ENTERPRISES
LIMITED d/b/a CONVENTION
TECHNICAL SERVICES' MOTION
TO SUPPLEMENT RECORD WITH
NEWLY DISCOVERED EVIDENCE**

Pursuant to 29 C.F.R. §102.48 (b), (d)(1) and (d)(2), NLRB Rule and Regulation 102.48 (b), (d)(1) and (d)(2), and the Board's inherent authority, Charging Party Desert Sun Enterprises Limited d/b/a Convention Technical Services ("CTS") moves the Board for leave to reopen the record to supplement it with newly discovered evidence presented in the Affidavits of Manny Alonzo ("Alonzo") and Frank Barrese ("Barrese"). Admission into evidence of the Alonzo and Barrese Affidavits is necessary to dispel Respondent International Brotherhood of Electrical Workers, Local Union 357, AFL-CIO's ("IBEW 357's") repeated assertions that it had and has no representational interest in CTS' employees and did not send its strike sanction request for recognitional or

1 organizing reasons.

2 This motion is based on the following memorandum of points and authorities and the
3 attached affidavits of Messrs. Alonzo and Barrese.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 The Board's consideration of the Alonzo and Barrese Affidavits is in the interests of
7 fairness in accord with 29 C.F.R. §102.48 (b), (d)(1) and (d)(2), NLRB Rule and Regulation 102.48
8 (b), (d)(1) and (d)(2), and the Board's inherent authority.

9 At issue in these proceedings is the IBEW 357's motivation. That issue raises fact issues
10 uniquely within the knowledge of the Union's representatives and which must be proved by the
11 representatives' words and actions as they become revealed to others. IBEW 357 has not
12 disputed that when it first picketed CTS, it had a full-blown recognitional intent as set forth in its
13 International President's letter to the V.P. in charge of IBEW 357, which outlines the steps
14 necessary to obtain an NLRB election so that IBEW 357 could represent CTS's employees. C.P.
15 Exhibit 8, 3/26/99 letter from IBEW International President J.J. Barry to IBEW International
16 Vice President Michael Mowrey.

17 But when IBEW 357 threatened to picket and CTS filed charges against it, IBEW 357
18 changed its position and denied that it had a recognitional intent. Now, IBEW 357 has engaged
19 in overt organizational activities seeking to represent the same employees as evidenced by the
20 Alonzo and Barrese Affidavits. Introduction of the Alonzo and Barrese Affidavits is necessary
21 to afford the Board a full understanding of what has occurred in IBEW 357's dealings with CTS
22 employees.

23 **II. THE NEWLY DISCOVERED EVIDENCE IS NECESSARY TO REFUTE IBEW**
24 **357'S REPEATED DENIAL OF RECOGNITIONAL INTENT AND PURPOSE**

25 29 C.F.R. §102.48 (b), NLRB Rule and Regulation 102.48 (b), authorize the Board's
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1 consideration of newly discovered evidence upon good cause, stating:

2 (b) Upon the filing of timely and proper exceptions,
3 and any cross-exceptions or answering briefs, as provided in
4 section 102.46, the Board may decide the matter forthwith upon
5 the record, or after oral argument, or may reopen the record and
6 receive further evidence before a Member of the Board or other
7 Board agent or agency, or may make other disposition of the case.

8 The Alonzo and Barrese Affidavits are newly discovered evidence of the falsity of IBEW
9 357's extraordinary change of position with regard to its recognitional and organizational intent
10 toward CTS's employees. Since Al Davis, IBEW 357's Business Manager, Financial Secretary
11 and highest ranking officer, made his sworn assertions of no interest on the part of IBEW 357 in
12 recognition or organizing CTS's employees, it has become apparent that recognition and
13 organizing were precisely IBEW 357's purposes. The attached affidavit of CTS's employee
14 Alonzo states that the International Union of Operating Engineers Local 501 met with about 11
15 CTS employees at that union's hiring hall on April 23, 2015, and told them, despite having
16 represented those CTS employees since 1999 or 2000, that Local 501 would no longer represent
17 CTS's employees. Also, Alonzo swears that on May 3, 2015, he received a call from an IBEW
18 representative soliciting his membership into that union. CTS employee Barrese confirms in his
19 affidavit the meeting with International Union of Operating Engineers Local 501 on
20 approximately April 23, 2015, and that he came home in early May to find the business card of
21 Richard Work, Business Development Representative of IBEW with a note on the back which
22 said: "Hello Frank I just stopped by to talk to you about CTS. Have a great day. Richie." Such
23 phone calls and home visits are classic union organizational techniques.

24 Consideration of this newly discovered evidence is necessary in the interests of justice
25 and administrative economy to refute IBEW 357's repeated denial of any interest in recognition
26 or organization of CTS's employees and compels, for that reason alone, the affirmance of the
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1 ALJ decision.¹ Whether the Board determines to remand this matter to the Administrative Law
2 Judge for further consideration is a matter within the Board's discretion. However, the interests
3 of justice and fairness compel that the Board consider this newly discovered evidence. *See,*
4 *NLRB v. St. Mary's Acquisition Co., Inc.*, 240 Fed. Appx. 8, 11-12 (6th Cir. 2007) (*citing* 29
5 C.F.R. 102.48(d)(1) and concluding that "[t]he decision to grant or deny a new hearing under
6 [Section 102.48(d)(1)] is within the sound discretion of the Board and will only be disturbed by a
7 reviewing court if the challenging party establishes an abuse of discretion"); *Dayton Hudson*
8 *Dept. Store Co. v. NLRB*, 987 F.2d 359, 366 (6th Cir. 1993) (reversing and remanding where
9 newly discovered evidence of the use of forged union cards to generate union support warranted
10 the reopening of the record and a hearing); *Riechhold Chemicals, Inc.*, 288 NLRB No. 8 (1988)
11 (*quoting* J. Franfurter's dissent in *Henslee v. Union Planters Bank*, 335 U.S. 595, 600 (1949) and
12 granting reconsideration: "'[W]e are mindful that 'wisdom too often never comes, and so one
13 ought not to reject it merely because it comes late'");
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16 III. CONCLUSION

17 Were the Board to ignore the newly discovered evidence presented by the Alonzo and
18 Barrese Affidavits, the decision in the pending matter would not be a fair or just one: its record
19 would be incomplete and any judicial review would also be incomplete and unfair to the parties.
20 The Board's express authority under 29 C.F.R. §102.48 (b), (d)(1) and (d)(2), NLRB Rule and
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26 ¹ The ALJ found recognition intent based solely on the failure of IBEW to give to
27 neutral employers the assurance of compliance with Moore Dry Dock standards in its threat to
28 picket. The General Counsel is arguing the Board to overrule that requirement. It should not do
that in this case because the IBEW clearly wants to organize CTS's employees, and makes this
case a poor candidate for reversal of that requirement.

1 Regulation 102.48 (b), (d)(1) and (d)(2), and its inherent authority compel consideration of this
2 evidence.

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AFFIDAVIT OF MANNY ALONSO

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Manny Alonso, being duly sworn upon his oath, hereby deposes and says that:

1. I have been employed by Convention Technical Services, Inc., ("CTS") under the supervision of David Paulsen, General Manager, since approximately 1997. During that entire time up until recently, I was represented in that employment by Operating Engineers Union Local 501 and worked under a collective bargaining agreement negotiated by that Union with CTS. I joined that union on September 9, 2000.

2. On approximately April 23, 2015, we were called to a meeting at Local 501's hiring hall. Three representatives of Local 501 were there and they asked us to sign in with name, address, phone number and e-mail (there were about 11 of us). Most of us gave some or all of that information. They then told us that it would no longer represent us.

3. On May 7, I received a call from 702-496-2743. He told me he was with IBEW. I asked him how he got my phone number and he said he worked tradeshow and could get anyone's number. He said he was calling to see if I wanted to join IBEW.

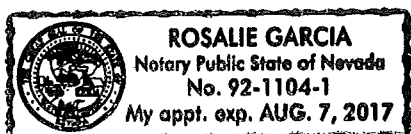


MANNY ALONSO

SUBSCRIBED and SWORN to before me
this 14th day of May, 2015 by Manny Alonso.



NOTARY PUBLIC



AFFIDAVIT OF FRANK BARRESE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Frank Barrese, being duly sworn upon his oath, hereby deposes and says that:

1. I have been employed by Convention Technical Services, Inc., ("CTS") under the supervision of David Paulsen, General Manager, since approximately 2000. During that entire time up until recently, I was represented in that employment by Operating Engineers Union Local 501 and worked under a collective bargaining agreement negotiated by that Union with CTS. I joined that union in approximately 2004.

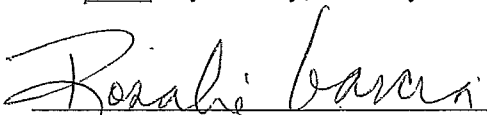
2. On approximately April 23, 2015, three representatives of Operating Engineers Local 501, met with about 11 employees from CTS at the union hiring hall. As we signed in (about 11 of us), they asked for our names, addresses, phone numbers and e-mail addresses. I signed in but I don't recall what info I gave them. They then told us that it would no longer represents us.

3. In early May 2015, I came home and found a business card on my front door. A copy is attached as Exhibit 1.

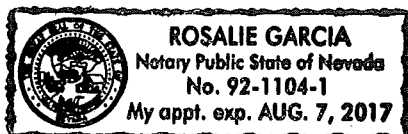


FRANK BARRESE

SUBSCRIBED and SWORN to before me
this 17th day of May, 2015 by Frank Barrese.



NOTARY PUBLIC





IBEW LOCAL 357
SERVING SOUTHERN NEVADA FOR OVER 80 YEARS

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Hello FRANK,
I just stopped
by to talk
to you about
CTS.

Have a great
Day
Richie
☺